

November 24, 1997

To: Tib Belza, Roger Strelow, Mary Selkirk, and Members of
Water Transfer Group

From: Alex Hildebrand

I regret that I was unable to take part in the discussion of "Solution Options" at the Nov. 21 meeting. This memo is to offer some thoughts on this matter.

I believe we must distinguish among and have different policies for different types of transfers which have differing potential consequences for redirected impacts. A single transfer policy restricted to broad concepts can not realistically and equitably be articulated for a wide range of types of transfer. Single season transfers within a watershed and purpose of use rarely have serious redirected impacts and they can, therefore, be facilitated without a lot of analysis and oversight. Transfers within a purpose of use but from one basin to another require somewhat more scrutiny, particularly if they are acknowledged or likely to become multi-year transfers, or they can result in groundwater overdraft. Transfers involving both a change in purpose of use and a change in basin of use almost inevitably involve significant redirected impacts. These impacts are not only short term but also involve long term consequences of a shift in the proportionate use of a limited resource. The water supply will become increasingly inadequate, as the population grows, to meet our social and environmental needs, including the production of food.

The self-serving argument that what is good for the buyer and seller will be good for society flies in the face of what we have found to be necessary in respect to sales of land for different purposes, and to sales of beaches, parks, refuges, and other essential resources wherein there is a substantial societal interest in controlling the proportionate use of a resource whose overall supply is not substantially increased by price.

It makes no sense to attempt to preserve agricultural lands with zoning, Williamson Act protection, land use preservation easements, etc., and then free market the water supply that is appurtenant to those lands and without which they can not survive in agriculture. It is like preserving a wetland and then free marketing its water. Free market water transfers are not an acceptable way to determine proportionate use of water for different purposes in society's best interest.

There are not likely to be significant redirected impacts in transferring new water yield, but there seems to be a lot of misunderstanding in regard to whether existing yield is surplus to the watershed or only to the seller. Transfers tend to be

most desired in dry and critical years. In those years there is rarely any surplus water in the watershed of the Delta. The water is either consumed in the watershed, or exported, or used to provide the required amount of Delta outflow. A seller upstream of the Delta may have access to more water than he needs, but if it is exported or used for new consumption some other party either has to decrease exports or limit consumptive use.

There is also confusion about what constitutes a reduction in consumptive use by a seller. In the case of the Natomas sale, for example, the Bureau correctly questioned on May 15, 1997 whether the seller had demonstrated a reduction in consumptive use. (In other cases the Bureau has itself made purchases without examining this issue). Reducing direct diversions by reapplying return flow and tail water does not reduce consumptive use if the same crops and yields prevail. The available water in the Delta watershed is not, therefore, increased by these measures. When the overall water supply is not increased and the overall consumptive demand is not decreased it is necessary to determine who gives up water and whether the seller's water rights are superior to the water loser's rights. This determination is likely to be involved and can not be left to determination by the seller and buyer, or even by the SWRCB within a restricted time limit and limited resources. Another reason why transfers beyond a purpose and basin of use must be carefully analyzed by the SWRCB is that the buyer and seller can not be expected to make cumulative impact assessments.

This memo does not attempt to propose the specifics that should apply to transfers anticipated by Cal Fed, but it attempts to raise again some issues which I believe should govern the development of the specifics.